

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LEON BENEK,

Plaintiff,

v.

KANSAS CITY LIFE INSURANCE
COMPANY, a Missouri corporation doing
business in Washington, and its wholly owned
subsidiary SUNSET LIFE INSURANCE
COMPANY OF AMERICA, a foreign
corporation doing business in Washington,

Defendants.

Case No. C07-5142FDB

ORDER GRANTING PLAINTIFF
LEAVE TO FILE MOTION
and
DENYING PLAINTIFF'S SECOND
MOTION TO ENFORCE THE
DISCOVERY CUTOFF DATE

Plaintiff Benek had a contractual arrangement with Defendant to sell their insurance products in Washington; the relationship was terminated effective January 31, 2007. Under the Agreements with Defendants, Benek forfeited any amounts due under the contracts if he replaced or assisted in replacing a policy issued by Defendants with that of another carrier.

Benek brought this cause of action claim he is owed additional commissions; Defendant counterclaimed seeking repayment of commissions paid to Benek after certain variable life insurance policies he sold were rescinded or reformed in order to comply with the tax code.

Benek moves for leave to file a nondispositive motion after the cutoff date, asserting that Defendants continue to engage in discovery after the cutoff date. Plaintiff moves to enforce the

1 discovery cutoff date, which the Court assumes is the motion that Benek seeks leave to file.


2 Benek's motion concerns Defendants' subpoena to Davis Life Brokerage requesting
3 documents relating to Plaintiff Leon Benek and policies issued by Defendants that he replaced with
4 policies of another carrier. Defendants' subpoena was issued in mid-December 2007 well before the
5 discovery cutoff date, and it seeks documents relevant to the claims at the center of this case. On
6 December 26, 2007, Davis Life reported its issues with the subpoena to Defendant's counsel, and on
7 January 3 and again on January 14, 2008, Defendants' counsel spoke with Davis Life's counsel
8 concerning those issues. Counsel for Davis Life ultimately agreed to produce the requested
9 documents, but that it had to wait until January 22, 2008 because the employee who needed to be
10 consulted with the documents was out of town. Defendants' counsel has stated that they will
11 provide Plaintiff's counsel with copies of the documents.

12 The Court is not persuaded that Defendants' efforts to obtain relevant discovery from Davis
13 Life was improper or that Benek should receive the relief he requests, including an order to return
14 all documents received from third parties after the January 7, 2008 discovery cutoff date.

15 ACCORDINGLY, IT IS ORDERED:

- 16 1. Plaintiff Benek's Motion for Leave To File A Nondispositive Motion After the Cutoff
17 Date [Dkt. # 38] is GRANTED (assuming that the referenced motion is Benek's
18 Second Motion To Enforce The Discovery Cutoff [Dkt # 39]);
19 2. Plaintiff Benek's Second Motion To Enforce The Discovery Cutoff [Dkt. # 39] is
20 DENIED.

21 DATED this 6th day of February, 2008.

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24 FRANKLIN D. BURGESS
25 UNITED STATES DISTRICT JUDGE
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